

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-330

June 21, 2002

HARTT'S ELECTRIC SERVICE, INC.
Request for Waiver of Chapter 395,
Section 3(c)(3) Regarding Central
Maine Power Company's Standards to
Allow the Use of Stella Jones Red Pine
Penta Poles

ORDER GRANTING WAIVER
REQUEST

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order I grant the waiver request of Hartt's Electric Service, Inc. (Hartt's) to suspend the operation of section 3(C)(3) of Chapter 395 of the Commission's rules with regard to a Construction Standard of Central Maine Power Company (CMP). Under section 3(C)(3), all Construction Standards are in effect temporarily. The Standard at issue purportedly establishes the material requirements for utility poles pursuant to section 3(C)(3). CMP claims that under the Standard, private line extension contractors may only use poles sold by two manufacturers or distributors. Under this waiver, private line extension contractors may also deploy red pine poles, pressure-treated with pentachlorophenol ("penta-treated poles") that are sold by Stella Jones, Inc.

II. TEMPORARY NATURE OF THE WAIVER

The waiver that this Order grants from CMP's proposed construction standard is by definition temporary. Chapter 395, section 3(C)(3) states that a utility's construction standards on file with the utility will apply temporarily until the utility files its standards for approval pursuant to section 3(B),¹ and they are approved pursuant to the process described in section 3(C). If CMP submits the same pole material standard as part of its section 3(B) filing, and there is opposition to that standard, the Commission will need to reconsider the issue considered in this Order. In considering the issue at that time CMP and persons opposing the standard are of course free to present evidence not presented in the course of this waiver request case.

¹ Section 3(B)(3)(b) requires a 35-day period for comments from the list of interested persons required by section 3(B)(3)(a). Section 3(B)(2) allows a utility 91 days from the effective date of the Rule (May 12, 2002) to file its proposed standards with the Commission. CMP has not yet made that filing, as it is presumably waiting for comments.

III. PROCEDURAL BACKGROUND

On June 4, 2002, Hartt's Electric Service filed a request that the Commission waive section 3(C)(3) so that CMP's Standard for poles will not prohibit Hartt's and other private line extension contractors from using penta-treated red pine poles manufactured by Stella Jones. CMP has read its standards, as they now exist, to preclude the use of poles other than those sold by two manufacturers or distributors (For-Tex and Koppers). Hartt's filed supporting materials with its request and CMP, in response, also filed supporting materials that I discuss below.

IV. PRELIMINARY QUESTION

Initially, a question exists as to whether CMP's line extension standards do in fact limit the poles that may be used in line extensions to those of two distributors. The specifications for poles are located in section 307 of the Standards. The first ("General") paragraph on page 307 states:

Wood poles used on Central Maine Power Company's distribution system should be full length treated with Pentachlorophenol (Penta) or Chromated Copper Arsenate (CCA).

Page 307-3 states the minimum pole dimensions (circumferences) for poles of various lengths and wood types, as established by the ANSI Standard 05.1 – 1992. Seven wood types are listed, including "Southern Yellow Pine and "Red Pine (Norway)." In short, the standards contained in section 307 expressly permit CCA-treated red pine poles, and nothing in that section limits the poles that may be used in line extensions to those of any particular manufacturers or distributors.

These Standards were published in book form and provided to private line extension contractors in the fall of 2001. On May 15, 2002, CMP published revisions to a number of pages in the Standards. The revisions did not include any pages in section 307.

The last tab in the Standards book is entitled "Material Lists." Each page contains the heading "Central Maine Power Company – Contractor Item Catalog." The Commission staff understands that CMP uses the catalog for its own ordering of materials. Page 53 (dated 11/07/01) of the catalog (in the book issued in the fall of 2001) lists item numbers and part numbers for poles of various lengths. The column "Manufacturer – Name" lists For-Tex, Koppers and "All Makes" for all pole length categories. (The 35-foot category lists "All Makes" twice.) On December 12, 2001, CMP revised page 53 of the Material Lists to eliminate the listing of "All Makes" for poles of all lengths.

Nothing in section 307 or elsewhere in the descriptions of the physical characteristics of equipment contained in the actual Standards (the numbered sections 301-397) provides any indication that the Contractor Item Catalog is part of the Standards or incorporated in the Standards, or that the Catalog serves to limit or modify the Standards, such that contractors (or CMP) cannot use poles that are clearly included in the Standards (such as red pine poles, either penta-treated or CCA-treated) that meet ANSI standards, or are sold by a particular distributor (such as Stella Jones). Nevertheless, CMP has stated to Hartt's and the Commission staff that its *Standards* prohibit the use of red pine poles sold by Stella Jones.

I could issue a narrow decision that CMP's Standards do in fact permit the use of red pine poles sold by Stella Jones on the ground that they do not effectively incorporate any limitations that may be implicit in the Contractor Item Catalog. However, if CMP decided that it wished to pursue the matter of restricting poles to those supplied only by certain manufacturers, it obviously could cure any structural deficiencies in the Standards by making the limitation clear.² Accordingly, I will proceed to address the substantive question of the reasonableness of CMP's purported limitation as if CMP had effectively stated the limitation in its Standards.

V. MERITS OF HARTT'S AND CMP'S POSITIONS

In its waiver request, Hartt's alleges that it had been using the Stella Jones poles for several years in CMP's service area; that it and other private line extension contractors purchase the poles from or through Bangor Hydro Electric Company (BHE); that BHE itself had been using the poles for several years; and that neither BHE nor the contractors had encountered any problems in using the poles.

As noted above, CMP's Materials List included poles of "all makes" until December of 2001. As justification for the present prohibition of Stella Jones poles (or poles sold by anybody other than Koppers or For-Tex), CMP relies on (1) an independent study conducted by the Wood Science and Technology Center at the University of New Brunswick and (2) its own experience in deploying 25 red pine poles in the Bridgton area in 1997.

Neither the study nor CMP's experience support its position against the use

² One of the purposes of published standards is to make the Standards clear to contractors, as well as to CMP's own personnel who themselves construct line extensions or who interact with private contractors. I suggest that the Standards that CMP will file with the Commission for approval should state all physical characteristics and limitations on materials in the Standards themselves rather than in a Materials List or Contractor Item Catalog, whether such a catalog is expressly incorporated in the standards or not. The Standards themselves should include limitations, if any, that restrict materials to those sold by certain manufacturers or distributors. For the reasons stated below, the Commission is not likely to favor Standards that restrict material sources unless there are substantial reasons for such restrictions.

of penta-treated red pine poles manufactured by Stella Jones. Although the study shows that the poles studied were susceptible to severe damage from fungus, the study addressed "CCA-treated" red pine poles, not Penta-treated red pine poles. It also indicated that CCA-treated poles would be acceptable if properly dried. CMP's experience with the red pine poles deployed in 1997 was highly negative: they were susceptible to fungus and the outer layers of the pole peeled off. However, none of the poles remain in place and CMP has no records that can establish (or personnel who know with certainty) whether the 1997 poles were penta-treated or CCA-treated. Strangely, despite the date of the Report (1997) and its 1997 experience, CMP did not take any action to limit the use of poles it believed were problematical until December of 2001.

In addition to the fact that CMP cannot support its position, BHE and several of the private line extension contractors who build line extensions in the service areas of both CMP and BHE have deployed penta-treated red pine poles manufactured by Stella Jones for about 5 years. There apparently has been no indication of fungus damage or other abnormal deterioration.

Stella Jones represents that its poles meet ANSI 05.1 specifications (the standard referenced at page 307-3 of CMP's Standards). Red pine is inherently not as strong as yellow pine, but, in compensation, the ANSI standards for each pole length (and class within each length) specify that red pine poles must be thicker than yellow pine poles.

I find that CMP cannot at this time justify its position that only poles supplied by two sellers can be used by private line extension contractors in CMP line extensions. Because of the narrow request by Harrt's, it is not necessary to rule at this time that private line extension contractors may use poles from any manufacturer. The waiver is therefore limited to allowing the use of penta-treated red pine poles manufactured by Stella Jones.

After a review of any comments it might receive pursuant to section 3(B)(3), CMP will formally submit its proposed Standards to the Commission pursuant to section 3(B)(2). The Commission staff will carefully review any attempts to restrict materials to those made or sold by certain manufacturers if the materials otherwise ostensibly meet the described physical characteristics (or external standards, such as those of ANSI). One of the purposes of Chapter 395 is to foster competition (and the benefits of competition such as lower prices) among various line extension constructors. Promoting (or at least not impeding) competition among suppliers of line extension materials has the potential for a similar beneficial effect on retail prices by lowering costs. If CMP proposes any such limitations, it should be prepared to justify them on grounds such as product quality. Following approval of the Standards, both private contractors and CMP should also fully utilize the provisions of section 3(E), which encourage the use of more flexible standards and alternative materials.

ORDERING PARAGRAPH

For the foregoing reasons, pursuant to authority delegated to the Director of Technical Analysis by Chapter 395, § 10, I hereby

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the request of Hartt's Electric Service, Inc. for a partial WAIVER of the requirement of Chapter 395, § C(3) that the line extension construction standards of a utility shall apply until that utility's standards are approved by the Commission. This partial waiver applies to the line extension construction standard of Central Maine Power Company requiring that certain poles be used for line extensions. Under this waiver, CMP and private line extension contractors may use red pine poles pressure-treated with pentachlorophenol ("penta-treated poles") that are manufactured by Stella Jones, Inc., in addition to the poles made by the manufacturers listed by CMP in its Material List a/k/a Contractor Item Catalog. This waiver shall remain in effect until the completion of the review and approval process for CMP's line extension construction standards under section 3(B) of Chapter 395 or until further order of the Director of Technical Analysis or the Commission.

BY ORDER OF THE DIRECTOR OF TECHNICAL ANALYSIS

Faith Huntington

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.